



FACT SHEET ON DISQUALIFICATION FROM MUNICIPAL DECISIONS PART 3: SOURCES OF INCOME

The City's Ethics Ordinance includes laws that prohibit City Officials from influencing municipal decisions when it is reasonably foreseeable that those decisions will have a material financial effect on their economic interests. This fact sheet is one of a series of fact sheets designed to offer general conflict of interest guidance to City Officials who participate in making municipal decisions. This particular fact sheet is focused on conflicts involving sources of income. Keep in mind that the information offered in this fact sheet should not be considered a substitute for the actual language contained in local and state law.

GENERAL RULES

- ❖ The Ethics Ordinance prohibits City Officials from participating in a municipal decision if it is reasonably foreseeable (i.e., a realistic possibility) that the decision will have a “material financial effect” on any person or entity from whom the official has received income of \$500 or more within the previous twelve months.
- ❖ Income includes salary, wages, reimbursement of expenses, per diem, commission income, incentive compensation, rent, proceeds from a sale, outstanding loans, and forgiveness of a loan.
- ❖ Under this rule, for example, a City Official who receives compensation from a private consulting contract with a local company would likely be unable to participate in a City decision that would financially benefit the local company.
- ❖ Your income also includes your 50% community property interest in the income of your spouse or registered domestic partner. In other words, any source of income of \$1,000 or more to your spouse or registered domestic partner within the previous 12 months must be considered for conflict purposes.
- ❖ Your income also includes your pro rata share of any income received by a business entity or trust in which you, your spouse, or your registered domestic partner own a 10-percent or greater interest. In other words, if you are the sole owner of a business entity, you have an economic interest in any client or customers who paid the business \$500 or more within the previous 12 months.
 - ✓ If your spouse or registered domestic partner is the sole owner of a business entity, you will have an economic interest in any clients or customers who paid that business \$1,000 (your community property pro rata share would be \$500) or more within the previous 12 months.
 - ✓ Under certain circumstances, a customer of a business entity engaged in the retail sales of goods or services to the public may not be a source of income to a City Official. Contact the Ethics Commission for additional assistance.

- ❖ If you and your spouse or registered domestic partner have a separate property agreement (such as a pre-nuptial agreement) stating that you have no community property interest in the other person's income, then you are not required to consider the other person's income for disqualification purposes. Note, however, that you must still consider potential conflicts associated with a business entity or real property owned by the other person, despite such an agreement.
- ❖ Income does not include your salary from a former employer if (a) you received, or were entitled to receive, all such salary from the former employer before you became a City Official; and (b) the income was received in the normal course of the previous employment; and (c) you had no expectation when assuming office that you would return to the employ of the former employer.
- ❖ For purposes of these rules, "income" does not include salary, reimbursement for expenses, per diem, or similar benefits received from a federal, state, or local governmental entity. The salary a City Official's spouse receives from a job with the County of San Diego, for example, is not considered "income" for purposes of this conflict of interest rule.
- ❖ "Income" also does not include an inheritance, a loan from a commercial lending institution on terms available to the general public, loans from family members, campaign contributions, alimony, or child support payments.
- ❖ If you have a source of income from a business entity, you must also consider any parent, subsidiary, or affiliate of the entity for disqualification purposes. Please contact the Ethics Commission for additional information regarding the criteria for a parent, subsidiary, or affiliate relationship.
- ❖ Whether the financial effect of a municipal decision on a source of income is "material" depends on the applicable facts. As a general rule, however, the financial effect will be "material" if the source of income is the subject of the decision or will be financially affected by the decision. As discussed below, materiality rules may be broken down into two categories: sources from a business or occupation, and sources that provide one-time or occasional income.

MATERIALITY – INCOME FROM A BUSINESS OR OCCUPATION

- ❖ These materiality rules apply when the City Official (or spouse) receives income from his or her business or occupation, such as salary, incentive compensation, commission payments, etc.
- ❖ The financial effect of a municipal decision on a source of this type of income is "material" if:
 - ✓ the source is a claimant, applicant, respondent, contracting party, or is otherwise named or identified as the subject of the proceeding; or,
 - ✓ the source is an individual who will receive a measureable financial benefit or loss from the decision or who has an interest in a business entity or real property that the official has reason to know will be financially affected by the decision (see disqualification fact sheets concerning business interests and real property for guidance); or,
 - ✓ the source is a non-profit entity that will receive a measurable financial benefit or loss from the decision or that has an interest in real property that the official has reason to know will be financially affected by the decision (see disqualification fact sheet concerning real property for guidance); or,

- ✓ the source is a for-profit business entity that will be financially affected by the decision (see disqualification facts sheet concerning business entities for guidance).
- ❖ For example, Lorne is a Deputy Director; his spouse works for Qualcomm. Lorne has a financial interest in Qualcomm because of his community property interest in his spouse's income. Lorne may not participate in a municipal decision if Qualcomm is the subject of the decision.
- ❖ Another example: Molly is a Planning Commissioner who owns an accounting firm specializing in tax advice for non-profit entities. One of Molly's clients is a non-profit entity that owns property across the street from a parcel that requires Planning Commission approval to become a homeless shelter. Because Molly has reason to know that her client's real property will be financially affected if the parcel becomes a homeless shelter, she may not participate in the Planning Commission decision.

MATERIALITY – INCOME OTHER THAN FROM A BUSINESS OR OCCUPATION

- ❖ These materiality rules apply when the City Official (or spouse) receives income from a person or entity that is not the City Official's (or spouse's) business or employer. The one-time sale of a house or boat, for example, fits within this category.
- ❖ The financial effect of a municipal decision on a source of this type of income is "material" if the official knows, or has reason to know, that:
 - ✓ the source is a claimant, applicant, respondent, contracting party, or is otherwise named or identified as the subject of the proceeding; or,
 - ✓ the source has an interest in a business entity that will be financially affected by the decision (see disqualification facts sheet concerning business entities for guidance); or,
 - ✓ the source has an interest in real property that will be financially affected by the decision (see disqualification facts sheet concerning real property for guidance).
- ❖ For example, Lester is a Council Representative. Three months ago, he sold his house to Gina, a partner in a law firm. In the midst of the transaction, Gina told Lester that her firm was seeking a contract to provide outside legal services to the City. For 12 months after the sale, Lester will be disqualified from participating in any municipal decisions that will financially affect Gina or Gina's firm, including the decision to award the contract for legal services.
- ❖ Another example: Lou is a Program Manager in the Planning Department. He advertised the sale of a dining room set on Craigslist. Bill sees the ad and buys the set for \$600. Bill owns real property that will increase in value if an upcoming land use decision is approved. Because Lou does not know or have any reason to know about the decision's impact on Bill's real property interests, he is not precluded from participating in the land use decision.

INSIGNIFICANT FINANCIAL EFFECT

- ❖ Notwithstanding the rules set forth above, there are circumstances in which a municipal decision's financial effect is so minor that it does not rise to the level of being "material." In other words, a City Official does not have a disqualifying conflict of interest in a municipal decision if the financial effect of the decision is nominal or inconsequential.

- ❖ For example, Gus is a Deputy Director in Street Division. His spouse works for Phoenix Farms, a grocery chain. The City plans to make road improvements near a Phoenix Farms store that will require a half-hour closure to one of the store's parking lot entrances. Although Phoenix Farms may experience reduced business during that short period of time, the impact would be so insignificant that Gus will not be disqualified from participating in decisions relating to the roadway improvement project.

PUBLIC GENERALLY

- ❖ Even if the financial effect of a municipal decision on a source of income is material, you will not be disqualified from participating in that decision if you can establish that the decision will affect that entity or individual in a manner that is no different from the manner in which the decision will affect the public generally.
 - ✓ If the source of income is a business entity or a non-profit entity, the "public generally" exception will apply if the decision also affects, in substantially the same manner, either 2,000 or twenty-five percent of all such entities in the City (or in the district you represent) so long as the effect is on entities composed of more than a single industry, trade, or profession.
 - ✓ If the source of income is an individual, the "public generally" exception will apply if the decision also affects, in substantially the same manner: (a) ten percent or more of the City's residents (or of the district you represent), or (b) 5,000 individuals who are City residents.

CONTRACTS

- ❖ If the municipal decision involves a contract, be sure you also review the Ethics Commission's "Fact Sheet on Financial Interests in a Contract."

Determining whether or not you have a conflict of interest in a particular municipal decision can be a complicated matter. Do not hesitate to contact the Ethics Commission at (619) 533-3476 for additional assistance.

Rev. 1/22/15